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BOOK REVIEWS

LAWS, ITS ORIGIN, GROWTH AND FUNCTION. By James Coolidge Carter. New York and London: G. P. Putnam's Sons. 1907. Pp. vii, 355.

In this volume are assembled thirteen lectures, which Mr. Carter at the time of his death was preparing for delivery before the Harvard Law School. They were the outgrowth of his earnest conviction, deepened by maturing years, that the rules of law as empirically laid down in the text books and decided cases should be studied "as parts of a classified and orderly system exhibiting the law as a science." His paramount theme is that the foundation of all private law is to be sought not in legislation conceived as the direction of a sovereign, but in the development of customs. His view of the functions of judges is that these men are experts in determining what one person has a right to expect from his neighbor, or in short, what is the custom or rule of conduct of the people with regard to any particular transaction. In the development of the investigation the author, after pointing out the numerous, but universally unsuccessful, attempts to accurately define the meaning of "law," first examines from an historical standpoint the gradual growth of the regulation of human conduct. From this study, the outlines of which are skillfully condensed in a few pages, the conclusion is derived that custom is the only law disclosed in the earliest stages of society. By an analysis based on illuminating sketches of the state of society at different historical periods, and in varied parts of the world the conclusion is reached that it is as true to-day as it was among the earliest primitive savages that law in its essence is merely the expression through the decisions of judges (or experts) of the customs of the people. For example, Mr. Carter believes that in the interpretation of a deed the Court merely decides whether or not under existing customs or rules of conduct the language used is sufficient to pass the title. The same principle is to be applied to the law of negligence, of carriers, etc. Even the well-known codes are made to fit into this theory by the statement "The law enacted in these civil codes was not *made* by the legislation enacting them" (p. 117). In the summary of this analysis of historical devel-

opment of law Mr. Carter says "Custom, therefore, is not the accidental, trivial and meaningless thing which we sometimes think it to be. It is the imperishable record of the wisdom of the illimitable past reaching back to the infancy of the race, revised, corrected, enlarged, open to all alike and read and understood by all."

Space will not permit of even a suggestion of the discussion of the proper function of legislation which is defined to be primarily that of public and criminal law, or of the keen presentation of the dangers (but not of the advantages) of codes; or of the vigorous and at times almost ferocious attacks on the theories of Bentham, of Austen and of Maine.

The language throughout is forceful and the logic convincing. To the almost irresistible temptation of the enthusiastic advocate, the stretching of his theories to an unwarrantable extent, Mr. Carter has succumbed but seldom. No one can read his glowing words without being struck with the charm of his style and the vividness of his expression. No one can study his book without obtaining a most illuminating insight into the processes by which the law has grown in the past and will develop in the future. No one can peruse his volume without the steadfast conviction that Mr. Carter has made a most valuable contribution to the analytical and accurate study of a noble science.

R. D. J.

INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR, WITH THE DECISIONS OF THE JAPANESE PRIZE COURTS. By Sakuyé Takahashi. American edition. New York: The Banks Law Publishing Co. 1908. Pp. xviii, 805.

This work is of unusual interest and timeliness. The qualification of the author is obvious. He is professor of international law in the Imperial University of Tokyo; former professor of the I. J. Naval Staff College; vice president of the International Law Association, London; legal adviser to the Japanese fleet during the China-Japanese War; member of the legal committee in the I. J. Department for Foreign Affairs during the Russo-Japanese War, and author of "Cases on International Law During the Chino-Japanese War." Although the author modestly keeps himself in the background, the book betrays that he himself furnished much of the advice on which important action was taken, and thus we have information from very intimate and exact sources.